

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Nicholas Martino, et al.	:	
	:	
Plaintiffs	:	Civil Action No.
	:	
v.	:	02-CF-V4633
	:	
	:	
Richard Craft, et al.	:	
	:	
Defendants.	:	

O R D E R

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, upon consideration of Defendants Richard Craft and John Hammerschmidt's Motion to Strike Jury Demand and Plaintiffs' Response thereto, it is hereby ORDERED AND DECREED that Defendants' Motion is GRANTED and that the parties shall submit proposed Findings of Fact and Conclusions of Law 15 days following the close of evidence and production of trial transcripts in this matter.

BY THE COURT:

\_\_\_\_\_  
Honorable Thomas N. O'Neill, Jr.

UNITED STATES DISTRICT COURT  
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**PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS RICHARD  
CRAFT AND JOHN HAMMERSCHMIDT'S MOTION TO STRIKE JURY DEMAND**

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Plaintiffs Nicholas Martino, Nicole Martino, and Marybeth Martino ("Plaintiffs") file this Memorandum in Response to the Motion to Strike Jury Demand of Richard Craft and John Hammerschmidt ("Defendants"). Plaintiffs do not oppose this Motion, but request that the Court enter an Order expressly providing the parties an opportunity to submit Proposed Findings of Fact and Conclusions of Law.

Without seeking a jury trial, plaintiffs instituted this action in this Court based upon federal admiralty jurisdiction and pursuant to Article III, Section 2 of the United States Constitution and 28 U.S.C. § 1333. On or about August 9, 2002, defendants submitted a jury demand. Now, over one year later, on August 19, 2003, defendants file this Motion to strike their jury demand and have this action proceed as a non-jury matter. Defendants contend that, because admiralty jurisdiction does not create a right to a jury trial, their initial jury demand was invalid.

At all times prior to defendants' Motion this case was conducted and prepared as a matter to be tried before a jury.

Pursuant to the Court's Pre-Trial Order dated June 17, 2003, plaintiffs, on August 18, 2003, submitted their Pre-Trial Memorandum and Proposed Jury Instructions to the Court. Because defendants had demanded a jury, plaintiffs had no reason to submit Proposed Findings of Fact or Conclusions of Law to the Court.

Plaintiffs do not oppose defendants' Motion. However, plaintiffs should have the opportunity to submit Proposed Findings of Fact and Conclusions of Law to the Court, and not be precluded from doing so because defendants waited until the eve of trial, and after plaintiffs filed their pre-trial submissions, to file their Motion to Strike Jury Demand. Consequently, plaintiffs request that, if the Court grants defendants' Motion, it also enter an Order in the attached form, providing that the parties may submit Proposed Findings of Fact and Conclusions of Law within 15 days following the trial of this matter and after trial transcripts have been provided to the parties.

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**CERTIFICATE OF SERVICE**

I, Darin J. McMullen, Esquire, certifies that, on the 2nd day of September, 2003, a true and correct copy of Plaintiffs' Memorandum in Response to Defendants Richard Craft and John Hammerschmidt's Motion to Strike Jury Demand was served via First Class Mail on the following individual:

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Nicholas Martino and

Martino, a minor, by her  
parent and guardian,  
Marybeth Martino and  
Marybeth Martino, in her  
own right